



State of Wisconsin  
Governor Scott Walker

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

**DATE:** February 3, 2014

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Steve Ingham, Division of Food Safety Administrator *Steve Ingham*

**SUBJECT: Milk Haulers, ch. ATCP 82; Final Draft Rule**

**PRESENTED BY:** Steve Ingham and Staff

**REQUESTED ACTION:**

At the February 19, 2014 meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a final draft rule (copy attached) related to ch. ATCP 82, Milk Haulers. The rule further aligns Wisconsin's regulations with the Food and Drug Administration's (FDA's) Pasteurized Milk Ordinance (PMO). Consistent with the PMO, the rule allows partial collection of milk from bulk milk tanks, clarifies and strengthens grade "A" permit reciprocity and establishes a certified industry inspection program for bulk milk tankers. The rule also modernizes terminology used in the rule and aligns grade "A" bulk milk weigher and sampler inspection requirements with the PMO. It simplifies regulations regarding cleaning and sanitizing milk tankers, clarifies procedures for retaining bulk milk tanker cleaning tags, and removes an unnecessary requirement for reporting broken seals on tankers.

*Plain Language Analysis*

**Background**

The dairy industry is an important part of Wisconsin's economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk, throughout the collection and transportation process, is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk and proper sampling of milk for analysis help ensure fair payment and milk safety, respectively.

The following rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by ensuring that inspection practices are aligned with the PMO. The PMO establishes minimum standards for Grade "A" dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet standards substantially equivalent to, or more stringent than, those in the PMO in order for Wisconsin Grade "A" milk to enter interstate commerce. The PMO

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standards are established by the National Conference on Interstate Milk Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

## **Rule Content**

The rule does all of the following:

### Partial Collection of Milk from Bulk Milk Tanks

The rule adopts a provision of the PMO that allows, but does not require, bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms. The PMO allows partial collections if certain practices are used to maintain the quality of milk. The rule adopts these practices, including a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable temperature-recording device is installed and operating on the bulk tank. To ensure proper regulatory oversight of partial collections of milk, the rule also requires a bulk milk weigher and sampler to record when a partial pickup is made and when the bulk tank is emptied.

### Bulk Milk Tanker Grade "A" Permit Reciprocity

The rule also clarifies and strengthens reciprocity requirements for bulk milk tanker Grade "A" permits. The PMO requires that each bulk milk tank truck delivering Grade "A" raw milk and milk products bear a Grade "A" permit, which may only be issued after satisfactory completion of an annual inspection. The bulk milk tanker operator must possess a current permit and passed inspection to deliver Grade "A" milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from an appropriate state regulatory agency and that each permit be recognized by the appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade "A" permit. Under the current rule, a Grade "A" permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade "A" permits are issued both to tankers located in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because some Wisconsin-licensed tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade "A" permit valid.

The rule ends the current practice of routinely providing a Grade "A" permit as part of the licensing process and clarifies that a Grade "A" permit will only be granted after completion of the annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade "A" permits issued by an equivalent regulatory agency in another state, if the bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tanker operators to seek Grade "A" inspections from the regulatory agency in the state

in which their tankers are located and will bring Wisconsin into compliance with reciprocity requirements of the PMO.

#### Certified Industry Inspection Program for Bulk Milk Tankers

Logistical issues often make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. If a Wisconsin tanker operator tries to deliver Grade "A" milk or milk products outside Wisconsin without proof of a current inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator an inspection fee. To further ensure that all Wisconsin-based bulk milk tankers receive an annual inspection in a timely manner, the rule establishes a voluntary certified industry inspection program, in accordance with the PMO, for inspecting bulk milk tankers. The PMO requires, and the rule adopts, stringent procedures for ensuring proper regulatory oversight of certified industry inspections so that inspections are conducted consistently and the certified inspectors effectively evaluate bulk milk tanker equipment, construction, cleaning, sanitation and repair. Under the authority of s. 97.24(3), Stats., which allows the department to develop rules to ensure Wisconsin's milk and milk products meet PMO requirements, the rule allows the department to appoint certified industry inspection personnel who wish to participate in the program in accordance with s. 97.32, Stats., which outlines procedures for the department to appoint special food and dairy inspectors.

#### Other changes to modernize ATCP 82

The rule also makes other changes designed to modernize the rule and further align it with the PMO, including:

- Replacing the term "milk hauler" with "bulk milk weigher and sampler" to reflect current terminology that more fully encompasses the tasks performed by a bulk milk weigher and sampler. This term is consistent with the name of the license required under s. 98.146, Stats., for a person performing these tasks. The definitions will also be revised to clarify that use of the term "department" throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.
- Removing the requirement that a bulk milk tanker operator must clean and sanitize the bulk milk tanker, while maintaining the requirement that the tanker must be cleaned and sanitized adequately. The rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifying that personnel at the entity responsible for cleaning and sanitizing a bulk milk tanker must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. Under the rule the records would be kept at the location where the documented action occurred.

- Adding a requirement that, in addition to obtaining a license, a Bulk Milk Weigher and Sampler, who seeks to hold the Grade "A" permit necessary for collection of Grade "A" samples, must be inspected every two years. There will be no additional fee for the inspection and permit.
- Removing the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. These requirements were originally added to ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food safety practices.

### *Effect on Small Business*

The rule will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The rule does not substantially alter requirements which dairy-related businesses already must meet. The rule does not increase license or permit fees. All Grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA's PMO in order to collect, sample, and transport Grade "A" milk and milk products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers which is required for Grade "A" permits. A valid Grade "A" permit is required to transport and deliver Grade "A" dairy products.

Under the rule, some dairy producers may incur costs if they need to purchase a 7-day temperature recording-device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7-day temperature recording device if partial collections of milk are not made from the tank. Producers who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning and sanitizing.

Rule changes, related to inspecting and providing Grade "A" permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade "A" permit, will have no impact on small business since bulk milk tankers and bulk milk weighers and samplers are already required

to be licensed and inspected. The rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers. The rule does not increase license or permit fees.

### *Federal and Surrounding State Programs*

#### **Federal Programs**

The PMO establishes minimum standards for regulation of Grade "A" dairy products. States must set standards equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade "A" milk and milk products in interstate commerce. Section 97.24 (3), Stats., authorizes Wisconsin to create rules necessary to ensure compliance with the PMO. These rule changes will bring Wisconsin's regulations regarding milk collection, sampling and delivery in line with the 2011 PMO.

#### **Surrounding State Programs**

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their dairy regulations and therefore already allow partial collection of milk from bulk milk tanks. The rule will also align Wisconsin's regulations with the PMO and these neighboring states for licensing and permitting of Grade "A" tankers and bulk milk weighers and samplers. Each of these states licenses milk tankers, and issues a Grade "A" permit after inspection. Some states charge a fee associated with these inspections.

### *Public Hearings*

DATCP held three public hearings:

January 15, 2014 Eau Claire, Wisconsin  
January 16, 2014 Madison, Wisconsin  
January 17, 2014 Green Bay, Wisconsin

Following the public hearings, the hearing record remained open until January 31, 2014 for additional written comments. Seven people attended the hearings and we received three written comments. A summary of the oral and written comments may be found in Appendix A.

### *Changes from the Hearing Draft*

We made all technical rule changes suggested by the Legislative Council Rules Clearinghouse, with the following exceptions:

- We retained use of the passive voice in some cases since the focus of some requirements is on

the task rather than the person completing the task; and

- We retained the use of the term “bulk milk weigher and sampler” to reflect current terminology and make the rule consistent with language used in s. 98.146, Stats., which authorizes the department to license bulk milk weighers and samplers.

DATCP revised the rule to clarify the difference between a grade A permit issued for a bulk milk tanker and a grade A permit issued for a bulk milk weigher and sampler. We revised and reorganized provisions in ATCP 82.04 related to licensing and issuing grade A permits for bulk milk weighers and samplers to further clarify these requirements. We also revised the rule analysis to provide further explanation of the department’s statutory authority for issuing a grade A permit for bulk milk weighers and samplers, and the department’s authority for implementing a certified industry inspection program, in response to questions from the Legislative Clearinghouse.

We also incorporated technical corrections suggested during the public hearing process and made the following additional changes:

- Shortened the length of time in which the department must issue a bulk milk tanker license to an applicant from 40 days to 30 days and the length of time in which the department shall grant or deny a bulk milk weigher and sampler license to an applicant from 60 to 40 days;
- Allowed milk which is over 50 ° Fahrenheit to be collected if, within 4 hours after collection, the milk is being processed exclusively into milk or dairy products not designated as a grade A dairy product under s. ATCP 80.01(14) and (15); and
- Included milk silos in the definition of “bulk tank”, to allow partial collection of milk from milk silos as well as bulk tanks, and address the concern expressed during the hearing that several large farms are considering using upright milk silos for on farm storage.

### *Next Steps*

If the Board approves this final draft rule, the department will transmit the final draft rule to the Governor for his written approval. After DATCP receives written approval from the Governor, DATCP will submit the rule to the Legislature for review by appropriate legislative committees. If the Legislature has no objections to the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

## Appendix A

### RULEMAKING HEARING APPEARANCES AND TESTIMONY

**Rule Subject:** Milk Haulers  
**Adm. Code Reference:** ATCP 82, Wis. Adm. Code  
**Rules Clearinghouse #:** CR 13-004  
**DATCP Docket #:** 13-R-03

Eau Claire, Wisconsin  
January 15, 2014

Name/Organization	Organization	Testified- Y/N	Written- Y/N	Position/Comments
Wayne Myren, Eleva, WI	Wisconsin Milk Haulers Association	Y	Y	Supported the proposed rule and expressed concern over the need for recording charts on bulk tanks for partial pickups. Recommended allowing additional pickups in a 24 hour period.

Madison, Wisconsin  
January 16, 2014

Name/Address	Organization	Testified- Y/N	Written- Y/N	Position/Comments
Cherie Houser, Madison, WI	Wisconsin Milk Haulers Association	Y	N	Supported the proposed rule but expressed some concern over the requirement for chart recorders. Recommended allowing additional pickups in a 24 hour period.
David Ward, Madison, WI	Cooperative Network	Y	Y	Supported the proposed rule and suggested additional changes that they outlined in written testimony.
John Manske, Madison, WI	Cooperative Network	Y	Y	Supported the proposed rule and suggested additional changes that they outlined in written testimony.
Tom Howells, Madison, WI	Wisconsin Motor Carriers Association	Y	Y	Was in support of the proposed rule as written.

Green Bay, Wisconsin  
January 17, 2014

Name/Address	Organization	Testified- Y/N	Written- Y/N	Position/Comments
Jerrold Schroeder, Oconto Falls, WI	Wisconsin Milkhaulers Association	Y	N	Support of the proposed rule as written.
Jacquelyn Machkovich, Black Creek, WI	Saputo Cheese	Y	N	Supported the proposed rule, but expressed concern about the removal of the requirement for a tanker being sealed after filling, due to upcoming FSMA rules.

### Written Testimony

Name/Organization	City	Comments	Position
Keith Braun, Director of Milk Procurement and Jeff Montsma, Manager of Producer Services Agropur, Inc.	Appleton, Wisconsin	Support the concept of allowing partial collection of milk because it will create flexibility and opportunity for efficiency of milk pickups. Recommended adding milk silos wherever the proposed rule references bulk milk tanks.	Support.
David Ward, Dairy Director and John Manske, Director of Government Relations, Cooperative Network	Madison, Wisconsin	Recommended reducing the amount of time allowed for the department to grant or deny tanker and bulk milk weigher and sampler licenses and grade A permits. Suggested that the rule allow milk with a temperature above 50 degrees Fahrenheit to be diverted for cheese processing. Noted a typo in the proposed rule.	Support
Bob Carrier Food Scientist- Advanced (Food and Dairy Specialist) Wisconsin Department of Agriculture, Trade and Consumer Protection	Fredonia, Wisconsin	Suggested retaining the wording regarding other measuring devices in ATCP 82.10(8)(a) and encouraged retaining the requirement that direct tanker shipments must be under seal when they arrive at the dairy plant. Suggested possible revisions to ATCP 82.12(2)(b) regarding sampling.	Neither support or oppose. Offered technical suggestions.



**PROPOSED ORDER  
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the  
2 following rule *to repeal* ATCP 82.01 (6), 82.10 (5) (b) and 82.14 (3); *to renumber* 82.04 (3); *to*  
3 *renumber and amend* 82.04 (5), (6), (7) (intro.), (a), (b), and (8), 82.10 (5) (a) and 1. to 3., (9),  
4 and 82.14 (4); *to amend* ATCP 82 (title), 82.01 (2), 82.02 (7) (a) and (b), 82.04 (title) and (4),  
5 82.08 (title), (1) (a) to (c), (2), (3) (intro.) and (a), (4) (title), (a) (intro.), 2., and 3., (b), and (c),  
6 82.10 (1), (2) (intro.) and (c) to (e), (3), (4) (b), (5) (a), (6), (7), (8), (10) (intro.), (a), (b), (d), and  
7 (e), and (11) (a), (b), and (c), 82.12 (1) (a) and (b), (2), (2m) (b), (3), (4) (d), (5) (intro.) and (6);  
8 and *to create* ATCP 82.01 (1s) and (4m), 82.02 (8), 82.04 (3) (a), (6) (c), (7) (a) and (b), (9),  
9 (10), and (11), 82.08 (1) (intro.), (4) (d) and (6) (d), 82.10 (9) (b) and (11) (am); *relating to* milk  
10 hauler regulations, and affecting small business.

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**Analysis Prepared by the Department  
of Agriculture, Trade and Consumer Protection**

Ch. ATCP 82 (Milk Haulers) regulates bulk milk tanker licensing, construction, maintenance, cleaning and sanitizing requirements, establishes requirements for bulk milk weighers and samplers, and mandates procedures for collecting milk from dairy farms, delivering milk to dairy plants and collecting milk samples for testing. This rule revision will align Wisconsin's regulations with the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) by allowing bulk milk weighers and samplers to collect partial loads of milk, allowing bulk milk tanker grade A permit reciprocity, certifying industry inspectors for bulk milk tankers, and modernizing other requirements under the chapter.

***Statutes Interpreted***

Statutes Interpreted: ss. 97.21, Stats., (Milk haulers and milk distributors), 97.24, Stats., (Milk and milk products) and 98.146, Stats., (Licensing milk weighers and samplers).

### *Statutory Authority*

Statutory Authority: ss. 93.07 (1), 97.09 (4), 97.21 (6), 97.24(3) and 98.146, Stats.

### *Explanation of Statutory Authority*

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP" or the "department") has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP also has general authority under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. The department has specific authority to promulgate rules related to milk haulers under s. 97.21(6), Stats., which allows the department to establish rules related to: fees and regulations for bulk milk tanker operators and milk distributors; standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and, record keeping. The department has specific authority, pursuant to s. 97.24 (3), Stats., to develop rules to ensure Wisconsin's milk and milk products meet federal PMO (grade A) standards. Finally, the department is authorized to license bulk milk weighers and samplers, pursuant to s. 98.146, Stats.

### *Related Statutes and Rules*

Wisconsin's milk haulers are governed by ch. 97, Stats. (Food Regulation) and ch. 98, Stats. (Weights and Measures). Milk haulers and milk distributors are regulated under s. 97.21, Stats., (Milk haulers and milk distributors) and milk weighers and samplers are licensed under s. 98.146, Stats. Chapter ATCP 82, Wis. Adm. Code, interprets chs. 97 and 98, Stats., as it relates to bulk milk weighers and samplers.

### *Plain Language Analysis*

The dairy industry is an important part of Wisconsin's economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk throughout the collection and transportation process is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk, and proper sampling and analysis of milk, helps ensure fair payment and milk safety, respectively.

The following rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by ensuring that inspection practices are aligned with the Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade "A" dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet state regulatory standards equivalent to or more stringent than those in the PMO to be allowed to ship Grade "A" milk and milk products in interstate commerce. The PMO standards are established by the National Conference on Interstate Milk

Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

#### Partial Collections of Milk from Bulk Milk Tanks

The rule adopts a provision of the PMO that allows bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, ATCP 82 requires bulk milk weighers and samplers to empty a bulk milk tank each time they collect milk from the farm. The original intent of the regulation was to ensure that a dairy producer's bulk tank was regularly cleaned and sanitized and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

Despite these worthwhile intentions, the requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. Frequent testing can allow dairy plants to quickly address problems related to bulk tank cleanliness. As the number of dairy farms has decreased, farms have become larger, and per cow milk production has risen, many farms have purchased larger or additional bulk tanks, thereby creating new challenges for managing milk collection. Allowing partial collection of milk from bulk tanks will provide industry with the tools they need to manage milk collection from farms more efficiently. In the long run, increased flexibility for collection of milk may result in fewer trips required to haul milk, with associated fuel savings, and less wear and tear on roadways.

The PMO allows partial collection of milk, provided that certain practices are used to maintain the quality of milk. The rule adopts these practices, which include a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable temperature-recording device is installed and operating on the bulk tank. To ensure proper regulatory oversight of partial collections of milk, the rule also requires a bulk milk weigher and sampler to record when a partial pickup is made and when the bulk tank is emptied.

#### Bulk Milk Tanker Grade "A" Permit Reciprocity

The rule also seeks to clarify and strengthen reciprocity requirements for bulk milk tanker Grade "A" permits. The PMO requires that each bulk milk tank truck delivering Grade "A" raw milk and milk products bear a Grade "A" permit. Grade "A" permits may only be issued after satisfactory completion of an inspection that addresses specific items outlined in the PMO. Each bulk milk tanker is required to be inspected once per year and the bulk milk tanker operator must be able to show proof of a current permit and passed inspection to deliver Grade "A" milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from an appropriate state regulatory agency and that each permit be recognized by the appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade "A" permit. Under the current rule, a Grade "A" permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade "A" permits are issued both to tankers based in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because Wisconsin-licensed

tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade "A" permit valid.

The rule will end the practice of routinely providing a Grade "A" permit as part of the licensing process and clarify that a Grade "A" permit will only be granted after completion of the required annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade "A" permits issued by another equivalent state regulatory agency if the bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tankers to seek Grade "A" inspections from the regulatory agency in the state in which their tankers are based and will bring Wisconsin into compliance with reciprocity requirements of the PMO and the NCIMS.

#### Certified Industry Inspection Program for Bulk Milk Tankers

Often, logistical issues make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. Bulk milk tankers must hold a valid Grade "A" permit and the tanker operator must demonstrate that the tanker passed a recent inspection to deliver Grade "A" milk and milk products. If a Wisconsin tanker operator tries to deliver Grade "A" milk or milk products without a current tanker inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator a fee. To ensure that all Wisconsin-based bulk milk tankers receive an annual inspection, the rule will also establish a certified industry inspection program for inspecting bulk milk tankers.

Section 5 of the PMO allows state regulatory agencies to certify certain industry personnel to carry out bulk milk tanker inspections. Certified industry inspections are carried out under a cooperative arrangement with the state regulatory agency. Section 97.32, Stats., also establishes procedures that allow the department to appoint industry personnel to conduct special food and dairy inspections. The rule allows the department to select industry inspection personnel for the certified inspection program in accordance with s. 97.32, Stats., and adopts PMO procedures for conducting certified industry inspections. The PMO establishes stringent procedures for ensuring proper regulatory oversight of industry inspections so that inspections are conducted consistently and these inspectors effectively evaluate bulk milk tanker equipment construction, cleaning, sanitation and repair. The rule authorizes certified industry inspectors to perform all regulatory actions associated with issuing a Grade "A" permit for bulk milk tankers, establishes selection procedures, establishes a certification period of 3 years, and establishes record retention requirements. The rule allows the department to revoke a certification if the industry inspector fails to meet the requirements of the program. Under the rule, bulk milk tankers must be inspected annually by the department, another equivalent regulatory agency, or a certified industry inspector.

#### Other changes to modernize ATCP 82

In addition to clarifying practices for recognizing reciprocity with other states for bulk milk tanker Grade "A" permits and allowing partial collection of milk from bulk tanks, the proposed rule also makes other changes designed to modernize the rule and further align it with the PMO. The rule:

- Removes the definition of “milk hauler” and use of the term “milk hauler” and replaces the definition and term with “bulk milk weigher and sampler” to reflect current terminology that more fully encompasses the tasks they perform. This term is also consistent with ch. 98, Stats., which requires licensing of a bulk milk weigher and sampler. The definitions are also revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.
- Removes the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers and instead specifies that the tanker must be cleaned and sanitized adequately. The rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifies that personnel at the entity, responsible for cleaning and sanitizing a bulk milk tanker, must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. The rule thereby keeps the records at the location where the documented action occurred.
- Adds a requirement that, in addition to obtaining a license, a bulk milk weigher and sampler, who seeks to hold the Grade “A” permit necessary for collection of Grade “A” samples, must be inspected every two years. This requirement will bring Wisconsin’s bulk milk weigher and sampler requirements into compliance with the PMO. There will be no additional fees for these inspection and permit requirements.
- Removes the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. These requirements were originally added to ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food safety practices.

#### *Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations*

The PMO establishes minimum standards for regulation of Grade “A” dairy products. States must set standards equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade “A” milk in interstate commerce. Section 97.24, Stats., authorizes Wisconsin to create rules necessary to ensure compliance with the PMO. These rule changes will bring Wisconsin’s regulations regarding milk collection, sampling and delivery in line with the 2011 PMO.

#### *Comparison with Rules in Adjacent States*

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their dairy statutes and regulations and therefore already allow partial collection of milk from bulk milk tanks. The proposed rule will also align Wisconsin’s regulations with the PMO and these neighboring states for licensing and permitting of Grade “A” tankers and bulk milk weighers and samplers. Each of these states licenses milk tankers, and issues a Grade “A” permit after inspection. Some states charge a fee associated with these inspections.

## *Summary of Factual Data and Analytical Methodologies*

These rule changes were developed after consultation with industry, a review of PMO requirements, and a review of practices in neighboring states.

### *Analysis and Supporting Documents used to Determine Effect on Small Business*

The PMO makes no distinction between large and small businesses in establishing requirements for Grade "A" collecting, sampling and transporting milk and milk products. The expected cost for installing a 7-day temperature recording device was determined after consultation with industry.

### *Effect on Small Business*

The rule changes will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The rule does not substantially alter requirements which dairy-related businesses already must meet. The rule does not increase license or permit fees. All Grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA's PMO in order to collect, sample, and transport Grade "A" dairy products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers which is required for Grade "A" permits. A valid Grade "A" permit is required to transport and deliver Grade "A" dairy products.

If the rule is adopted, some dairy producers may incur costs if they need to purchase a 7-day temperature recording-device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7-day temperature recording device if partial collections of milk are not made from the tank. Producers who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning and sanitizing.

Rule changes related to inspecting and providing Grade "A" permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade "A" permit will have no impact on small business since bulk milk tankers and bulk milk weighers and samplers are already required to be licensed and inspected. The rule does not increase license or permit fees.

The rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers.

### ***DATCP Contact***

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DATCP held three public hearings on this rule and accepted written and oral testimony.

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1           **SECTION 1.** Chapter ATCP 82 (title) is amended to read:

2           Chapter 82 (title) BULK MILK HAULERS-COLLECTION, SAMPLING, AND  
3           TRANSPORTATION

4           **SECTION 2.** ATCP 82.01 (1s) is created to read:

5           ATCP 82.01 (1s) "Bulk milk weigher and sampler" means any person who collects  
6           official milk samples and may transport raw milk from a farm, or raw milk or fluid milk products  
7           to or from a dairy plant, receiving station or transfer station.

8           **SECTION 3.** ATCP 82.01 (2) is amended to read:

9           ATCP 82.01 (2) "Bulk tank" means a permanent or semi-permanent tank, ~~or~~ container, or  
10          silo used to receive, cool or store bulk quantities of milk on a dairy farm. "Bulk tank" does not  
11          include milk cans.

12          **SECTION 4.** ATCP 82.01 (4m) is created to read:

13          ATCP 82.01 (4m) "Department" means the Wisconsin department of agriculture, trade  
14          and consumer protection.

15          **SECTION 5.** ATCP 82.01 (6) is repealed.

16          **SECTION 6.** ATCP 82.02 (7) (a) and (b) are amended to read:

1           ATCP 82.02 (7) (a) Except as provided under par. (c), no person may operate a bulk milk  
2   tanker to transport milk or fluid milk products for sale or use as grade A milk or grade A ~~fluid~~  
3   milk dairy products unless that person holds a valid grade A permit issued annually for that bulk  
4   milk tanker by the department or an equivalent regulatory agency in another state where that  
5   bulk milk tanker is normally based. A grade A permit is not transferable between persons or  
6   bulk milk tankers. ~~A grade A permit may be issued in the form of an endorsement on a bulk~~  
7   ~~milk tanker license under sub. (1).~~

8           ATCP 82.02 (7) (b) An application for a grade A permit under par. (a) shall be made on a  
9   form provided by the department, ~~and may be included with a license application under sub. (2).~~  
10   The department shall grant or deny a grade A permit application within 40 30 days after the  
11   department receives a complete application. An application shall include proof of an inspection  
12   of the bulk milk tanker conducted within the preceding year by the department, another state's  
13   agency responsible for issuing grade A bulk milk tanker permits, or a certified industry inspector  
14   as allowed under s. ATCP 82.02(8).

15           **SECTION 7.** ATCP 82.02 (8) is created to read:

16           ATCP 82.02 (8) (title) CERTIFIED INDUSTRY INSPECTION OF GRADE A BULK MILK  
17   TANKERS.

18           ATCP 82.02 (8) (a) The department may certify industry personnel to inspect bulk milk  
19   tankers for the purpose of issuing grade A permits. Certified industry inspectors shall be  
20   authorized to conduct inspections and reinspections of bulk milk tankers and issue or deny grade  
21   A permits for bulk milk tankers.

22           ATCP 82.02 (8) (b) Applicants for the certified industry inspection program shall be  
23   appointed in compliance with requirements for special dairy and food inspectors under s. 97.32



(1), Stats. Certification shall be for a period not exceeding 3 years from the date of formal certification or re-certification. The department may revoke the certification of an industry inspector, if the inspector fails to comply with the requirements of the certified dairy inspection program, in accordance with s. 97.32 (4), Stats.

ATCP 82.02 (8) (c) The department shall maintain a written program describing procedures for implementing the certified industry inspection program. Certified industry inspectors shall maintain copies of certification and inspection records for 3 years and shall file annual bulk milk tanker inspection reports with the department.

**SECTION 8.** ATCP 82.04 (title) is amended to read:

ATCP 82.04 (title) **Bulk milk weigher and sampler; license and grade A permit.**

**SECTION 9.** ATCP 82.04 (3) is renumbered 82.04 (5).

**SECTION 10.** ATCP 82.04 (3) (a) is created to read:

ATCP 82.04 (3) (a) Submit an application for a bulk milk weigher and sampler license on a form provided by the department. The form shall be accompanied by all fees that are due and payable under sub. (6). The application shall include all information reasonably required by the department for licensing purposes.

**SECTION 11.** ATCP 82.04 (4) is amended to read:

ATCP 82.04 (4) ~~LICENSE ACTION ON INITIAL APPLICATION FOR BULK MILK WEIGHER AND SAMPLER LICENSE. An application for a bulk milk weigher and sampler license shall be made on a form provided by the~~ The department, and shall grant or deny an initial bulk milk weigher and sampler license be accompanied by all fees that are due and payable under sub. (5)(3) within 40 days after the department receives a complete application. The application shall include all information reasonably required by the department for licensing purposes.

1           **SECTION 12.** ATCP 82.04 (5) is renumbered 82.04 (6) and ATCP 82.04 (6) (b), as  
2 renumbered, is amended to read:

3           ATCP 82.04 (6) (b) *Reinspection fee required.* If the department reinspects a bulk milk  
4 weigher and sampler because the department finds a violation of ch. 97, Stats., or this chapter,  
5 the department shall charge the bulk milk weigher and sampler a reinspection fee of \$60. The  
6 reinspection fee is payable when the reinspection is completed, and is due upon written demand  
7 from the department. The department may issue a demand for payment when it issues a license  
8 renewal application to the bulk milk weigher and sampler.

9           **SECTION 13.** ATCP 82.04 (6) is renumbered ATCP 82.04 (8) and, as renumbered, is  
10 amended to read:

11           ATCP 82.04 (8) ACTION ON LICENSE APPLICATION TO RENEW A BULK MILK WEIGHER AND  
12 SAMPLER LICENSE. The department shall grant or deny a license application under sub. (4) (7)  
13 within ~~60~~ 40 days after the department receives a complete application.

14           **SECTION 14.** ATCP 82.04 (6) (c) is created to read:

15           ATCP 82.04 (6) (c) The department may require that the bulk milk weigher and sampler  
16 pass a written examination in conjunction with a reinspection. No fee shall be charged to the  
17 bulk milk weigher and sampler for this examination.

18           **SECTION 15.** ATCP 82.04 (7) (intro.) is renumbered ATCP 82.04 (3)(intro.) and, as  
19 renumbered, is amended to read:

20           ATCP 82.04 (3) INITIAL BULK MILK WEIGHER AND SAMPLER LICENSE EXAMINATION  
21 APPLICATION. Before the department initially licenses any person as a bulk milk weigher and  
22 sampler, that person shall demonstrate his or her competency by doing ~~both~~ all of the following:

1           **SECTION 16.** ATPC 82.04 (7) (a) and (b) are renumbered ATPC 82.04 (3) (b) and (c)  
2 and, as renumbered, are amended to read:

3           ATPC 82.04 (3) (b) ~~Passing~~ Pass a written examination administered by the department.

4           ATPC 82.04 (3) (c) ~~Succcessfully completing~~ Pass a field examination inspection  
5 administered by the department, within 21 days of passing the written examination.

6           **SECTION 17.** ATPC 82.04 (7) (a) and (b) are created to read:

7           ATPC 82.04 (7) (a) Submit an application for renewal of a bulk milk weigher and  
8 sampler license on a form provided by the department. The form shall be accompanied by all  
9 fees that are due and payable under sub. (6). The application for renewal shall include all  
10 information reasonably required by the department for licensing purposes.

11           ATPC 82.04 (7) (b) Pass a field inspection administered by the department or another  
12 regulatory agency which grants bulk milk weigher and sampler licenses, within the previous 24  
13 month period.

14           **SECTION 18.** ATPC 82.04 (8) is renumbered ATPC 82.04 (7) and, as renumbered, is  
15 amended to read:

16           ATPC 82.04 (7) LICENSE RENEWAL. A person applying to renew a bulk milk weigher and  
17 sampler license ~~may~~ shall be required to ~~pass a written examination or field examination~~  
18 ~~administered by the department.~~ do all of the following:

19           **SECTION 19.** ATPC 82.04 (9), (10), and (11) are created to read:

20           ATPC 82.04 (9) GRADE A BULK MILK WEAHER AND SAMPLER PERMIT REQUIRED. Except  
21 as provided under sub. (2), no person may do either of the following unless that person holds a  
22 valid grade A bulk milk weigher and sampler permit in addition to the bulk milk weigher and  
23 sampler license issued by the department under s. 98.146, Stats., and this section:

1 (a) Weigh or measure grade A milk, which will be processed as grade A milk or a grade  
2 A dairy product, for payment purposes.

3 (b) Collect test samples of grade A milk, which will be processed as grade A milk or a  
4 grade A dairy product, as required under s. ATCP 60.17.

5 ATCP 82.04 (10) OBTAINING AN INITIAL GRADE A BULK MILK WEIGHER AND SAMPLER PERMIT.

6 A person shall be granted a grade A permit by the department upon successfully obtaining their  
7 initial bulk milk weigher and sampler license under sub. (3) or before the expiration date of that  
8 license under sub. (5), provided that if any reinspections of the person have been conducted  
9 under sub (6), the most recent reinspection was passed by the person. A person holding a bulk  
10 milk weigher and sampler license from the department, who passes an inspection conducted by  
11 another regulatory agency which grants grade A bulk milk weigher and sampler permits, may  
12 conduct the activities in sub. (9) (a) and (b).

13 ATCP 82.04 (11) RENEWING A GRADE A BULK MILK WEIGHER AND SAMPLER PERMIT. A

14 person shall be granted a renewal of a grade A bulk milk weigher and sampler permit by the  
15 department upon successfully renewing their initial bulk milk weigher and sampler license under  
16 sub. (7) or before the expiration date of that license under sub. (5), provided that if any  
17 reinspections of the person have been conducted under sub (6), the most recent reinspection was  
18 passed by the person. A person holding a bulk milk weigher and sampler license from the  
19 department, who passes an inspection conducted by the regulatory agency of another state which  
20 grants grade A bulk milk weigher and sampler permits, may conduct the activities in sub. (9) (a)  
21 and (b).

22 SECTION 20. ATCP 82.08 (title) is amended to read:

23 ATCP 82.08 (title) **Cleaning and sanitizing bulk milk ~~containers~~ tankers.**

1       **Section 21. ATCP 82.08 (1) (intro.)** is created to read:

2       ATCP 82.08 (1) (intro.) A bulk milk tanker operator shall ensure the following:

3       **SECTION 22.** ATCP 82.08 (1) (a) to (c), (2), (3) (intro.) and (a), (4) (title), (a) (intro.), 2.,  
4       and 3., (b), and (c) are amended to read:

5       ATCP 82.08 (1) (a) No person may operate a bulk milk tanker unless a the bulk milk  
6       ~~tanker operator cleans the bulk milk tanker~~ is cleaned immediately after each day's use and  
7       ~~sanitizes the bulk milk tanker~~ sanitized prior to the next day's use. A bulk milk tanker operator  
8       ~~shall clean and sanitize a bulk milk tanker,~~ including all attached dairy product pumps and hoses,  
9       shall be cleaned and sanitized according to this section. A bulk milk tanker operator shall ~~re-~~  
10      ~~sanitize a bulk milk tanker~~ be re-sanitized if the tanker has not been used for more than 96 hours  
11      after last being sanitized.

12      ATCP 82.08 (1) (b) Except as provided in par. (c), a bulk milk tanker operator is not  
13      required to ~~clean~~ be cleaned or ~~sanitize a bulk milk tanker~~ sanitized between loads during a 24  
14      hour period, provided that a ~~the~~ bulk milk tanker operator ~~cleans the bulk milk tanker~~ is cleaned  
15      after that day's use and ~~sanitizes the bulk milk tanker~~ sanitized prior to the next day's use.

16      ATCP 82.08 (1) (c) ~~A bulk milk tanker operator shall clean and sanitize dairy~~ Milk and  
17      dairy product pumps and hoses ~~attached to the bulk milk tanker~~ shall be cleaned and sanitized  
18      whenever those pumps or hoses remain unused for more than 4 hours.

19      ATCP 82.08 (2) (a) A bulk milk tanker, including its pumps and hoses, shall be cleaned  
20      and sanitized in a fully enclosed and heated facility. The facility shall have an impervious  
21      drained floor. The facility shall be equipped with adequate hot and cold water under pressure, a  
22      wash vat, pressure sanitizing facilities and equipment storage racks. Bulk milk tankers may be  
23      cleaned and sanitized in the same room where milk is received from those bulk milk tankers.

1       ATCP 82.08 (2) (b) A facility used to clean and sanitize grade A bulk milk tankers,  
2       pumps, and hoses shall be covered by a grade A permit under sub. (6) and meet the requirements  
3       of par. (a).

4       ATCP 82.08 (3) CLEANING AND SANITIZING PROCEDURE. Whenever a bulk milk tanker  
5       ~~operator cleans~~ is cleaned and ~~sanitizes a bulk milk tanker~~ sanitized, the bulk milk tanker  
6       operator or bulk milk tanker cleaning facility employee shall do all of the following:

7       ATCP 82.08 (3) (a) Clean and sanitize every dairy product contact surface on the bulk  
8       milk tanker, including product contact surfaces of equipment and accessories used on the tanker.  
9       If a bulk milk tanker operator or bulk milk tanker cleaning facility employee is only required to  
10      clean tanker pumps and hoses under sub. (1) (c), the operator or employee shall clean every dairy  
11      product contact surface on those pumps and hoses.

12      ATCP 82.08 (4) (title) CLEANING TAG DOCUMENTATION.

13      ATCP 82.08 (4) (a) ~~Whenever a bulk milk tanker operator cleans and sanitizes a bulk~~  
14      ~~milk tanker according to sub. (1), the bulk milk tanker operator shall attach to the tanker a~~ No  
15      person may operate a bulk milk tanker unless a cleaning tag is attached that includes all of the  
16      following information:

17      2. The date and time of day when the bulk milk tanker ~~operator~~ was cleaned and  
18      sanitized ~~the bulk milk tanker~~.

19      3. The name and location of the facility where the bulk milk tanker ~~operator~~ was cleaned  
20      and sanitized ~~the bulk milk tanker~~, and the facility's grade A permit number under sub. (6) if  
21      any.

1       ATCP 82.08 (4) (b) The bulk milk tanker ~~operator~~ shall ~~attach the~~ have a tag attached as  
2 required under par. (a) to the outlet valve or inside the pump cabinet of the tanker. No person  
3 may remove the tag, except as provided in par. (c).

4       ATCP 82.08 (4) (c) Whenever a bulk milk tanker operator or bulk milk tanker cleaning  
5 facility employee cleans and sanitizes a bulk milk tanker, ~~the bulk milk tanker operator shall~~  
6 ~~remove the last~~ cleaning tag attached to the bulk milk tanker under this subsection shall be  
7 removed before attaching a new tag. The ~~operator~~ removed tag shall ~~retain the removed tag be~~  
8 retained for at least 15 days, at the location where the bulk milk tanker ~~operator~~ was cleaned and  
9 sanitized ~~the bulk milk tanker~~.

10       **SECTION 23.** ATCP 82.08 (4) (d) and (6) (d) are created to read:

11       ATCP 82.08 (4) (d) Whenever a bulk milk tanker operator or a bulk milk tanker cleaning  
12 facility employee cleans and sanitizes a direct ship tanker, the operator or employee shall apply a  
13 seal to each access port.

14       ATCP 82.08 (6) (d) In order for a bulk milk tanker cleaning facility to hold a valid grade  
15 A permit, the bulk milk tanker cleaning facility must pass a semi-annual inspection by the  
16 department.

17       **SECTION 24.** ATCP 82.10 (1), (2) (intro.) and (c) to (e), (3), (4) (b), and (5) (a) are  
18 amended to read:

19       ATCP 82.10 (1) (a) If milk from a grade A or grade B dairy farm violates ~~an applicable a~~  
20 ~~standard~~ under s. ATCP 60.15 on any single test, milk from that farm shall be collected at least  
21 once every 2 days until a subsequent test shows that the milk from that dairy farm ~~no longer~~  
22 ~~violates~~ complies with that standard. This paragraph does not require a bulk milk hauler weigher  
23 and sampler to collect milk if collection would violate ch. ATCP 60.

1           ATCP 82.10 (1) (b) A dairy plant operator receiving milk from a dairy farm shall  
2 immediately notify the bulk milk hauler weigher and sampler and milk producer whenever milk  
3 from that dairy farm must be collected more frequently in order to comply with par. (a). No  
4 dairy plant operator may receive milk collected in violation of par. (a).

5           ATCP 82.10 (2) SUPPLIES REQUIRED FOR MILK COLLECTION AND SAMPLING. A bulk milk  
6 hauler weigher and sampler who collects milk in bulk shall have the following supplies  
7 available:

8           ATCP 82.10 (2) (c) A sanitizing solution of not less than 100 ppm nor more than 200  
9 ppm chlorine or its equivalent. The bulk milk hauler weigher and sampler shall carry a  
10 sanitizing solution test kit to test the strength of the sanitizing solution.

11           ATCP 82.10 (2) (d) ~~If a milk hauler collects milk from a bulk tank at a dairy farm, an~~ An  
12 insulated carrying case with a rack to hold samples collected under s. ATCP 82.12. The carrying  
13 case shall comply with s. ATCP 82.12 (6) (a).

14           ATCP 82.10 (2) (e) A dial or digital thermometer, calibrated for accuracy against a  
15 thermometer traceable to a National Institute of Standards and Technology certified thermometer  
16 at least every 6 months, accurate to plus or minus 2° F., that can be used to check the accuracy  
17 of farm bulk tank indicating thermometers under sub. (6) (b).

18           ATCP 82.10 (3) BULK MILK HAULER WEAHER AND SAMPLER SANITATION. A bulk milk  
19 hauler weigher and sampler shall wear clean, ~~light-colored clothes and an effective hair restraint~~  
20 when measuring, sampling or collecting milk at a dairy farm. A bulk milk hauler weigher and  
21 sampler shall maintain a high degree of personal cleanliness, and shall observe good hygienic  
22 practices during all working periods. No bulk milk hauler weigher and sampler who has a



1 discharging or infected wound, sore or lesion on his or her hands or exposed arms may measure,  
2 sample or collect milk at a dairy farm.

3       ATCP 82.10 (4) (b) A bulk milk hauler weigher and sampler who rejects milk under par.  
4 (a) may not collect that milk, or commingle it with milk from any other producer. If a producer  
5 disputes a bulk milk hauler's weigher and sampler's rejection of milk, the bulk milk hauler  
6 weigher and sampler shall contact the operator of the dairy plant to which the milk would  
7 ordinarily be delivered, and the dairy plant operator shall examine the rejected milk to determine  
8 whether it was properly rejected.

9       **SECTION 25.** ATCP 82.10 (5) (a) and 1. to 3., are renumbered ATCP 82.10 (5) (intro.)  
10 and (a) to (c) and, as renumbered, amended to read:

11       ATCP 82.10 (5) A bulk milk hauler weigher and sampler shall wash and dry his or her  
12 hands before performing any of the following operations at a dairy farm:

13       (a) Using the bulk milk hauler's weigher and sampler's calibrated thermometer to  
14 measure the temperature of milk in a dairy farm bulk tank.

15       (b) Measuring ~~or sampling~~ the milk in the bulk tank.

16       (c) ~~Connecting Sampling the bulk milk tanker hose to in~~ the dairy farm bulk tank.

17       **SECTION 26.** ATCP 82.10 (5) (b) is repealed.

18       **SECTION 27.** ATCP 82.10 (6), (7), and (8) are amended to read:

19       ATCP 82.10 (6) (a) Before a bulk milk hauler weigher and sampler collects milk at a  
20 dairy farm, the bulk milk hauler weigher and sampler shall record the temperature of the milk to  
21 be collected, as shown on the dairy farm bulk tank indicating thermometer. If the milk is  
22 collected more than 2 hours after the last milking, the bulk milk hauler weigher and sampler shall  
23 reject the milk if the milk temperature exceeds 45° F. (7° C.). If milk from 2 or more milkings is

1 collected within 2 hours of the last milking, the bulk milk hauler weigher and sampler shall reject  
2 the milk if the milk temperature exceeds 50° F. (10° C.). Milk which does not meet these  
3 temperature requirements may be collected if, within 4 hours after collection, the milk has begun  
4 to be processed exclusively into milk or dairy products not designated as a grade A dairy product  
5 under s. ATPC 80.01(14) and (15).

6 ATPC 82.10 (6) (b) At least once each month, and more often if necessary, a bulk milk  
7 hauler weigher and sampler shall check the accuracy of each dairy farm bulk tank indicating  
8 thermometer by measuring the temperature of milk in the bulk tank with the bulk milk hauler's  
9 weigher and sampler's dial or digital thermometer. The bulk milk hauler weigher and sampler  
10 shall keep a written record comparing the temperatures recorded by the bulk milk hauler's  
11 weigher and sampler's thermometer with those recorded by the bulk tank thermometer. The  
12 written record shall be kept in the dairy farm milkhouse for at least one year.

13 ATPC 82.10 (6) (c) Before a bulk milk hauler weigher and sampler uses a dial or digital  
14 thermometer to measure the temperature of milk in a dairy farm bulk tank, the hauler weigher  
15 and sampler shall sanitize the stem of the thermometer in a sanitizing solution of not less than  
16 100 ppm nor more than 200 ppm chlorine or its equivalent. The bulk milk hauler weigher and  
17 sampler shall use the sanitizing solution according to label directions.

18 ATPC 82.10 (6) (d) A bulk milk hauler weigher and sampler shall immediately notify  
19 the milk producer and the dairy plant operator if the bulk milk hauler weigher and sampler finds  
20 that a dairy farm bulk tank is not cooling properly, or that the bulk tank thermometer is not  
21 indicating or recording temperatures accurately.

22 ATPC 82.10 (7) CONNECTING MILK HOSE. Before a bulk milk hauler weigher and  
23 sampler connects a bulk milk tanker hose to a dairy farm bulk tank, the bulk milk hauler weigher

1 and sampler shall examine the fittings of the bulk milk tanker hose and the dairy farm bulk tank  
2 outlet to ensure that both are clean. Before connecting the hose, the bulk milk hauler ~~may~~  
3 weigher and sampler shall clean and sanitize the bulk tank outlet if the outlet valve is leaking.  
4 The bulk milk hauler weigher and sampler shall attach the milk hose to the bulk tank outlet in a  
5 manner that does not contaminate the hose or hose cap. The hose shall be connected through the  
6 hose port in the milkhouse, and not through the milkhouse door.

7       ATCP 82.10 (8) (a) Before milk is transferred from a dairy farm bulk tank to a bulk milk  
8 tanker, the bulk milk hauler weigher and sampler shall accurately measure the amount of milk in  
9 the bulk tank. The bulk milk hauler weigher and sampler shall measure the milk using a clean  
10 gauge rod or other measuring device that is specifically designed and calibrated to measure milk  
11 in the bulk tank. Immediately before using ~~the a gauge rod or measuring device~~, the bulk milk  
12 hauler weigher and sampler shall ~~rinse the gauge rod or device with warm potable water, and~~  
13 wipe it dry with a clean single-service disposable towel.

14       ATCP 82.10 (8) (b) A bulk milk hauler weigher and sampler shall not measure the  
15 amount of milk in a dairy farm bulk tank until the milk is motionless. If the milk is being  
16 agitated, the bulk milk hauler weigher and sampler shall turn off the agitator and wait for the  
17 milk to become completely motionless before measuring the milk.

18       ATCP 82.10 (8) (c) After measuring the milk with a gauge rod or other device, the bulk  
19 milk hauler weigher and sampler shall use that measurement to calculate the weight or volume of  
20 milk in the bulk tank using the bulk tank manufacturer's conversion chart. The bulk milk hauler  
21 weigher and sampler shall record that weight or volume on a written collection record under sub.  
22 (10).

1           **SECTION 28.** ATCP 82.10 (9) is renumbered ATCP 82.10 (9) (a) and, as renumbered,  
2 amended to read:

3           ATCP 82.10 (9) (a) Before milk is transferred from a dairy farm bulk tank to a bulk milk  
4 tanker, a bulk milk hauler weigher and sampler shall collect a representative sample of that milk  
5 from the bulk tank for testing. The bulk milk hauler weigher and sampler shall collect the test  
6 sample according to s. ATCP 82.12.

7           **SECTION 29.** ATCP 82.10 (9) (b) is created to read:

8           ATCP 82.10 (9) (b) No additional milk may be added to the bulk tank until after all of the  
9 following:

- 10           1. Sampling and measuring has occurred,
- 11           2. The pick-up of milk is complete, and
- 12           3. The pick-up hose is disconnected from the bulk tank.

13           **SECTION 30.** ATCP 82.10 (10) (intro.), (a), (b), (d), and (e) and (11) (a) are amended to  
14 read:

15           ATCP 82.10 (10) MILK COLLECTION RECORD. Whenever a bulk milk hauler weigher and  
16 sampler collects a milk shipment from a dairy farm, the bulk milk hauler weigher and sampler  
17 shall make a written or electronic collection record for that shipment. One duplicate or  
18 electronically-printed copy of the collection record shall be posted in the dairy farm milkhouse,  
19 and an identical copy shall be provided to the dairy plant operator when the milk is delivered to a  
20 dairy plant. The collection record shall be legibly signed or initialed by the bulk milk hauler  
21 weigher and sampler and shall include all of the following:

- 22           (a) The milk producer's dairy plant identification number.

1 (b) The ~~milk hauler's~~ bulk milk weigher and ~~sampler~~ sampler's license number and  
2 license expiration date.

3 (d) The temperature of the milk when collected, as determined by the bulk milk ~~hauler~~  
4 weigher and sampler under sub. (6).

5 (e) The weight or volume of milk collected, as determined by the bulk milk ~~hauler~~  
6 weigher and sampler under sub. (8).

7 ATCP 82.10 (11) (a) After a bulk milk ~~hauler~~ weigher and sampler has sampled milk  
8 from a dairy farm bulk tank under sub. (9) and prepared a complete collection record under sub.  
9 (10), the ~~hauler~~ bulk milk weigher and sampler may transfer milk from that bulk tank to the bulk  
10 milk tanker. A bulk milk ~~hauler~~ weigher and sampler may not collect milk from any container  
11 on a dairy farm other than from a bulk tank. ~~A milk hauler may not collect any milk from a bulk~~  
12 ~~tank unless the hauler collects all of the milk from that bulk tank before any more milk is added~~  
13 ~~to the tank. Except as provided in par. (am), partial removal of milk from the bulk tank shall only~~  
14 ~~be permitted if the bulk tank is completely emptied, cleaned, and sanitized prior to the addition~~  
15 ~~of more milk to the bulk tank.~~

16 **SECTION 31.** ATCP 82.10 (11) (am) is created to read:

17 ATCP 82.10 (11) (am) Partial removal of milk from the bulk tank shall be permitted if all  
18 of the following apply:

19 1. The bulk tank is equipped with a 7 day recording device approved by the department as  
20 specified in s. ATCP 60.10(6).

21 2. The bulk tank is cleaned and sanitized when emptied.

22 3. The bulk tank is emptied at least every 72 hours.

1           4. The bulk milk weigher and sampler indicates the time and date on the recorder chart  
2 when a partial pickup is made and when the bulk tank is emptied.

3           **SECTION 32.** ATPC 82.10 (11) (b) and (c) are amended to read:

4           ATPC 82.10 (11) (b) After a bulk milk hauler weigher and sampler has collected all of  
5 the milk from a bulk tank, the bulk milk hauler weigher and sampler shall disconnect the milk  
6 hose from the bulk tank, cap the hose, and return the hose to its cabinet in the bulk milk tanker.  
7 The bulk milk hauler weigher and sampler shall inspect the bulk tank for abnormal sediments,  
8 and shall report any abnormal sediments to the dairy plant operator.

9           ATPC 82.10 (11) (c) After the bulk milk hauler weigher and sampler has disconnected  
10 the milk hose and inspected the empty bulk tank for abnormal sediments, the bulk milk hauler  
11 weigher and sampler shall rinse the bulk tank and milkhous floor with cold or lukewarm water  
12 unless the bulk tank is self-cleaning and includes a pre-rinse cycle as part of the self-cleaning  
13 process.

14           **SECTION 33.** ATPC 82.12 (1) (a) and (b), (2), (2m) (b), (3), (4) (d), (5) (intro.), and (6)  
15 are amended to read:

16           ATPC 82.12 (1) (a) A bulk milk hauler weigher and sampler or other individual shall  
17 collect a sample of a producer's milk before that milk is commingled with milk from any other  
18 producer. The bulk milk hauler weigher and sampler or other individual who collects the  
19 sample shall be licensed under s. 98.146 or 97.17, Stats.

20           ATPC 82.12 (1) (b) A bulk milk hauler weigher and sampler who collects milk from a  
21 dairy farm bulk tank shall collect the milk sample under par. (a). The bulk milk hauler weigher  
22 and sampler shall collect the milk sample from the bulk tank before the bulk milk hauler  
23 weigher and sampler transfers the bulk tank contents to a bulk milk tanker. The bulk milk hauler

1 weigher and sampler shall collect the sample according to sub. (2). The milk sample may not be  
2 commingled with a milk sample from any other bulk tank.

3         ATCP 82.12 (2) SAMPLING PROCEDURE; DAIRY FARM BULK TANKS. A bulk milk hauler  
4 weigher and sampler shall comply with the following procedures when collecting a milk sample  
5 from a farm bulk tank under sub. (1) (b):

6         ATCP 82.12 (2) (a) The bulk milk hauler weigher and sampler shall collect the sample  
7 from the dairy farm bulk tank after the bulk tank contents have been thoroughly mixed to ensure  
8 that the sample is representative. If the bulk tank capacity is less than 1500 gallons, milk in the  
9 bulk tank shall be agitated in the bulk milk hauler's weigher and sampler's presence for at least  
10 5 minutes before a sample is taken. If the bulk tank capacity is 1500 gallons or more, milk in the  
11 bulk tank shall be agitated in the bulk milk hauler's weigher and sampler's presence for at least  
12 10 minutes before a sample is taken.

13         ATCP 82.12 (2) (b) The bulk milk hauler weigher and sampler shall collect the sample  
14 using a method approved by the department or a sample dipper that is of sanitary design and  
15 construction, is clean and in good repair. The dipper shall be cleaned, sanitized, and then dipped  
16 at least twice in the bulk tank milk before it is used to collect a sample. The bulk milk hauler  
17 weigher and sampler shall sanitize the dipper in a sanitizing solution that is not less than 100  
18 ppm nor more than 200 ppm chlorine or an equivalent sanitizing solution and shall comply with  
19 the label directions of the sanitizing solution.

20         ATCP 82.12 (2) (c) After dipping the milk sample from the bulk tank, the bulk milk  
21 hauler weigher and sampler shall pour the sample into a sample container under sub. (4), and  
22 shall securely close the container. The container shall be labeled with the information required  
23 under sub. (5). When pouring the sample into its container, the bulk milk hauler weigher and

1 sampler shall take care not to contaminate the sample or spill milk back into the open bulk tank.

2 The bulk milk hauler weigher and sampler shall handle the sample container and cap aseptically.

3         ATCP 82.12 (2) (d) After collecting a milk sample, the bulk milk hauler weigher and  
4 sampler shall immediately rinse the sample dipper with clean potable water.

5         ATCP 82.12 (2m) (b) Before the individual collects the milk sample, the individual shall  
6 verify all of the following:

7         ~~1. That the bulk milk tanker access port is properly sealed. A dairy plant operator may~~  
8 ~~not accept the bulk milk shipment if the bulk milk tanker is not properly sealed when it arrives at~~  
9 ~~the dairy plant.~~

10         ~~2. That that~~ the contents of the bulk milk tanker have been thoroughly mixed,  
11 immediately prior to sampling, to ensure that the entire contents are homogeneous at the time of  
12 sampling. The contents shall be mixed in a manner that is known to ensure homogeneity.

13         ATCP 82.12 (3) TEMPERATURE CONTROL SAMPLE. A bulk milk hauler weigher and  
14 sampler shall collect 2 milk samples under sub. (1) at the first dairy farm where milk is collected  
15 for each bulk milk tanker load. The bulk milk hauler weigher and sampler shall mark one of  
16 those samples as the temperature control sample for all samples pertaining to that load. The  
17 sample container for the temperature control sample shall be marked with the producer's  
18 identification number, the bulk milk hauler's weigher and sampler's initials, the date and time  
19 when the sample was collected, and the temperature of the milk in the farm bulk tank from which  
20 the sample was collected.

21         ATCP 82.12 (4) (d) Labeled with the all of the information required under sub. (5), or  
22 designed so that the bulk milk hauler weigher and sampler can easily mark that information on  
23 the sample container.



1       ATCP 82.12 (5) SAMPLE IDENTIFICATION. Immediately before a bulk milk hauler  
2 weigher and sampler collects a milk sample under sub. (1), but before the bulk milk hauler  
3 weigher and sampler opens the sample container, the bulk milk hauler weigher and sampler  
4 shall clearly and indelibly label the sample container with all of the following information unless  
5 that information is already labeled on the sample container:

6       ATCP 82.12 (6) (a) Immediately after a bulk milk hauler weigher and sampler collects a  
7 milk sample under sub. (1), the bulk milk hauler weigher and sampler shall place the sample  
8 container in a clean refrigerated carrying case in which the bulk milk hauler weigher and sampler  
9 shall keep the sample at a temperature of 32 to 40° F. (0 to 4° C.). The carrying case shall be  
10 constructed of rigid metal or plastic, shall be effectively insulated and refrigerated to keep  
11 samples at the required temperature, and shall have racks designed to hold samples in a proper  
12 upright position. If sample containers are packed in ice or cold water to keep the samples  
13 refrigerated, the ice or water shall cover no more than 2/3 of each sample container.

14       ATCP 82.12 (6) (b) A bulk milk hauler weigher and sampler who collects a milk sample  
15 ~~{under}~~ under sub. (1) shall promptly deliver the sample to the dairy plant that receives the milk  
16 from the producer, or to a certified testing laboratory designated by the dairy plant operator.

17       **SECTION 34.** ATCP 82.14 (3) is repealed.

18       **SECTION 35.** ATCP 82.14 (4) is renumbered ATCP 82.14 (3) and, as renumbered,  
19 amended to read:

20       ATCP 82.14 (3) ~~After each day's use, a~~ A bulk milk tanker shall be cleaned and sanitized  
21 when empty as provided under s. ATCP 82.08.

1       **SECTION 36. EFFECTIVE DATE.** This rule takes effect on the first day of the month  
2 following publication in the Wisconsin administrative register, as provided under s.  
3 227.22(2)(intro.).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary

**Wisconsin Department of Agriculture, Trade and Consumer Protection**

**Final Regulatory Flexibility Analysis**

***Rule Subject:*** Bulk Milk Collection, Sampling and Transportation  
***Adm. Code Reference:*** ATCP 82  
***Rules Clearinghouse #:*** CR 13-104  
***DATCP Docket #:*** 13-R-03

***Rule Summary***

The following rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by ensuring that regulatory practices are aligned with the Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade "A" dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet state regulatory standards substantially equivalent to, or more stringent than, those in the PMO in order for Wisconsin Grade "A" milk and milk products to enter interstate commerce. The PMO standards are established by the National Conference on Interstate Milk Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

**Partial Collection of Milk from Bulk Milk Tanks**

The rule adopts a provision of the PMO that allows, but does not require, bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms. The PMO allows partial collections if certain practices are used to maintain the quality of milk. The proposed rule adopts these practices, including a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable temperature-recording device is installed and operating on the bulk tank. To ensure proper regulatory oversight of partial collections of milk, the rule also requires a bulk milk weigher and sampler to record when a partial collection is made and when the bulk tank is emptied.

**Bulk Milk Tanker Grade "A" Permit Reciprocity**

The rule also clarifies and strengthens reciprocity requirements for bulk milk tanker Grade "A" permits. The PMO requires that each bulk milk tanker truck delivering Grade "A" raw milk and milk products bear a Grade "A" permit, which may only be issued after satisfactory completion of an annual inspection. The bulk milk tanker operator must possess a current permit and passed inspection to deliver Grade "A" milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from an appropriate state regulatory agency and that each permit be recognized by the

appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade "A" permit. Under the current rule, a Grade "A" permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade "A" permits are issued both to tankers located in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because some Wisconsin-licensed tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade "A" permit valid.

The rule will end the current practice of routinely providing a Grade "A" permit as part of the licensing process and clarifies that a Grade "A" permit will only be granted after completion of the annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade "A" permits issued by an equivalent regulatory agency in another state if the bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tankers to seek Grade "A" inspections from the regulatory agency in the state in which their tankers are located and will bring Wisconsin into compliance with reciprocity requirements of the PMO.

#### Certified Industry Inspection Program for Bulk Milk Tankers

Logistical issues often make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. If a Wisconsin tanker tries to deliver Grade "A" milk or milk products outside Wisconsin without proof of a current inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator an inspection fee. Section 97.24(3), Stats., authorizes the department to make rules to ensure compliance with PMO standards. To further ensure that all Wisconsin-based bulk milk tankers receive an annual inspection in a timely manner, the rule also establishes a voluntary certified industry inspection program, in accordance with the PMO, for inspecting bulk milk tankers. The PMO requires, and the rule adopts, stringent procedures for ensuring proper regulatory oversight of certified industry inspections so that inspections are conducted consistently and that they effectively evaluate bulk milk tanker equipment, construction, cleaning, sanitation and repair. The rule would allow the department to appoint certified industry inspection personnel who wish to participate in the program in accordance with s. 97.32, Stats., which outlines procedures for the department to appoint special food and dairy inspectors.

#### Other changes to modernize ATCP 82

The rule also makes other changes designed to modernize and further align the rule with the PMO, including:

- Replacing the term “milk hauler” with “bulk milk weigher and sampler” to reflect current terminology that more fully encompasses the tasks described in the rule. This terminology is consistent with s. 98.146, Stats., which requires persons performing these tasks to hold a bulk milk weigher and sampler license. The definitions would also be revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.
- Removing the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers, while maintaining the requirement that the tanker must be cleaned and sanitized adequately. The proposed rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifying that personnel at the entity responsible for cleaning and sanitizing a bulk milk tanker must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. Under the rule the records would be kept at the location where the documented action occurred.
- Adding a requirement that, in addition to obtaining a license, a bulk milk weigher and sampler, who seeks to hold the Grade “A” permit necessary for collection of Grade “A” samples, must be inspected every two years. There will be no additional fee for the inspection and permit.
- Removing the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. These requirements were originally added to ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food safety practices.

### *Small Businesses Affected*

The rule changes will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already must meet. The rule does not increase license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” milk and milk products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers for

Grade “A” permits. A valid Grade “A” permit is required to transport and deliver Grade “A” milk and milk products.

If the rule is adopted, some dairy producers may incur costs if they need to purchase a 7-day temperature recording-device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7-day temperature recording device if partial collections of milk are not made from the tank. Producers who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning and sanitizing.

Rule changes, related to inspecting and providing Grade “A” permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade “A” permit, will have no impact on small business, since bulk milk tankers and bulk milk weighers and samplers are already required to be licensed and inspected. The rule does not increase license or permit fees.

The rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers.

#### ***Reporting, Bookkeeping and other Procedures***

The rule would require a bulk milk weigher and sampler to record when they make a partial collection of milk from a bulk milk tank. The rule would not require any additional reporting, bookkeeping or other procedures.

#### ***Professional Skills Required***

The rule does not require any new professional skills by small businesses.

#### ***Accommodation for Small Business***

All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration’s Pasteurized Milk Ordinance in order to collect, sample, and transport Grade “A” dairy products. The provision in the rule allowing partial collection of milk from bulk tanks is optional and while it is expected to primarily benefit larger businesses, it could also provide small businesses with more management flexibility. Other provisions in the rule will not substantially alter current practice. No special accommodation for small business may be made.

### *Conclusion*

The provisions in this rule will benefit Wisconsin's dairy industry. If adopted, this rule will provide more flexibility for dairy-related businesses that collect and transport bulk milk and milk products. It will clarify and simplify Grade "A" permit requirements for bulk milk tankers and bulk milk weighers and samplers. It will remove an unnecessary reporting requirement. Implementation costs associated are expected to be minimal and the rule does not increase license or permit fees.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 3rd day of February, 2014.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham  
Steven C. Ingham, Administrator,  
Division of Food Safety

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original   ☐ Updated   ☐ Corrected

2. Administrative Rule Chapter, Title and Number

ATCP 82, Milk Haulers

3. Subject

Bulk milk collection, sampling and transportation

4. Fund Sources Affected

☒ GPR   ☐ FED   ☒ PRO   ☐ PRS   ☐ SEG   ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115(1)(gb)

6. Fiscal Effect of Implementing the Rule

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Could Absorb Within Agency's Budget
		<input type="checkbox"/> Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

<input checked="" type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes   ☒ No

9. Policy Problem Addressed by the Rule

The dairy industry is an important part of Wisconsin's economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk throughout the collection and transportation process is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk and proper sampling of milk for analysis help ensure fair payment and milk safety, respectively. The proposed rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by aligning inspection practices with the Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade "A" dairy products. States must set and enforce standards substantially equivalent to, or more stringent than, those in the PMO for businesses to be allowed to ship Grade "A" milk and milk products in interstate commerce. The PMO standards are revised every two years, requiring DATCP to make periodic changes to dairy-related rules to ensure that Wisconsin maintains substantial compliance with the PMO and can continue to ship Grade "A" milk and milk products to other states.

The rule updates terminology related to bulk milk weighers and samplers, adopts procedures for allowing partial collections of milk from bulk milk tanks, establishes procedures for ensuring state-to-state reciprocity for inspecting and issuing Grade "A" permits for bulk milk tankers and also establishes a certified industry inspection program for issuing Grade "A" permits for bulk milk tankers. The rule adds a requirement that a bulk milk weigher and sampler who seeks to hold a Grade "A" permit necessary for collection of Grade "A" samples be inspected every two years, as required under the PMO. The rule allows more flexibility in who may clean and sanitize a bulk milk tanker, clarifies where the cleaning tag must be retained, and removes an unnecessary reporting requirement for broken seals on tanker access ports.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The rule impacts milk hauling companies, dairy plants and dairy producers. Division of Food Safety administrators met with the Board of Directors for the Wisconsin Milk Haulers Association and the Board of Directors of the Wisconsin Cheesemakers Association. The Division also contacted the following organizations requesting comments on the



## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

potential economic impact of the rule: Dairy Business Association, Professional Dairy Producers of Wisconsin, Cooperative Network, Wisconsin Milk Haulers Association, Wisconsin Association of Dairy Plant Field Representatives, Midwest Food Processors Association, Wisconsin Cheesemakers Association, and the Wisconsin Dairy Products Association.

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11. Identify the local governmental units that participated in the development of this EIA.

Grade "A" standards for bulk milk collection, sampling, and transportation are regulated by the State of Wisconsin's Department of Agriculture, Trade and Consumer Protection. Local governmental units are not impacted by this rule and did not participate in development of this EIA.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will impact the dairy industry as a whole, dairy plants, milk hauling companies, and dairy producers.

Overall, the rule changes are expected to have a positive economic impact on the dairy industry. Allowing partial collections of milk from bulk milk tanks may have a positive financial impact on trucking firms as it will allow them to more efficiently plan daily pickup routes, saving fuel and time costs. These cost savings may be significant for some dairy plants and trucking firms. Adopting this rule change will bring Wisconsin's dairy regulations in alignment with the PMO and with regulations adopted by neighboring states, providing a level playing field for Wisconsin businesses. As a voluntary option, this rule change will allow dairy plant and bulk milk tanker operators to decide whether to make partial collections of milk from bulk milk tanks based on business needs.

Under the rule, partial collections of milk from bulk tanks will be allowed if a bulk milk tank is equipped with a seven day temperature recording device. Some bulk tanks that were manufactured and installed prior to 2000 were not equipped with this device; installation would be required if partial collections of milk are made from the tank. The cost for installing a recording device on an existing tank is expected to be approximately \$1,500. However, an unknown number of bulk tanks, especially bulk tanks on larger farms where partial collections of bulk milk may be most likely to occur, are already be equipped with the necessary recording devices. Some of the cost for installing a temperature recording device may be offset over time from savings in reduced water and chemical usage for bulk tank cleaning and sanitizing, and time saved in conducting milking operations.

Rule changes regarding Grade "A" permits for bulk milk tankers will also provide a positive economic benefit to companies that operate milk tankers by ensuring they receive a Grade "A" inspection and permit in a timely manner. Bulk milk tanker operators must be able to show proof of a current Grade "A" permit and passed inspection to deliver Grade "A" milk and milk products. If a Wisconsin tanker tries to deliver Grade "A" milk or milk products outside Wisconsin without proof of a current inspection, the tanker load may be turned away or a regulatory agency from the receiving state may conduct the required inspection and charge the tanker operator an inspection fee in addition to the licensing fees they have already paid. To ensure that all Wisconsin-based bulk milk tankers receive an annual inspection in a timely manner, the rule establishes procedures which clarify and strengthen reciprocity requirements for bulk milk tankers based in other states, allowing Wisconsin to focus inspection resources on tankers based primarily in Wisconsin. The rule also establishes a certified industry inspection program which is an additional method allowed under the PMO that may be used to conduct required annual bulk milk tanker inspections.

This rule will have no impact on local governmental units or public utility rate payers.

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

#### **Comments Received and Response**

The Division received one comment from an industry representative regarding the potential economic impact of the rule. The comment indicated support of the provision that would allow partial collections of milk from bulk tanks, indicating that it will help their business in the logistical planning of milk collection, and allow them to cut some of their trucking costs.

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#### **13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule**

Allowing the partial collection of milk from bulk tanks may allow dairy producers to produce larger quantities of milk without investment in new bulk tanks and may allow trucking firms more flexibility in planning milk collection logistics. It will allow dairy plants and other companies that operate bulk milk tankers to more efficiently plan collection routes, saving fuel and time costs. It will also bring Wisconsin's regulations into alignment with regulations in neighboring states, allowing dairy-related companies in Wisconsin to continue to compete fairly with the dairy industry in other states. By recognizing Grade "A" permits issued in other states to out-of-state tankers that operate in Wisconsin, Wisconsin will more clearly be in compliance with reciprocity requirements in the PMO. Establishing reciprocity procedures will also allow Wisconsin to focus inspection resources on tankers based primarily in Wisconsin and ensuring that they receive Grade "A" inspections and permits in a timely and efficient manner. The voluntary certified industry inspection program for bulk milk tankers, as authorized by the PMO, will provide another tool for ensuring all Wisconsin bulk milk tankers receive an annual inspection in a timely manner. Other rule changes provide businesses with more flexibility by deleting the requirement that a bulk milk tanker operator must be the person who cleans and sanitizes the tanker and removing an unnecessary requirement for reporting broken tanker seals.

Currently, Wisconsin's dairy regulations are substantially in compliance with the PMO. The PMO is updated every two years and it important that Wisconsin periodically revise its dairy regulations to maintain equivalency with the PMO. The alternative of not adopting these rule changes will not immediately impact Wisconsin's ability to ship Grade "A" milk and milk products in interstate commerce, but eventually could lead to Wisconsin failing an FDA audit of compliance with the PMO. However, these rule changes will ensure Wisconsin's regulations related to the collection, sampling, and transportation of Grade "A" milk and milk products are better aligned with the PMO. Without these rule changes, some Wisconsin dairy businesses may find themselves at a disadvantage to dairy businesses in other states that have adopted regulations allowing partial collections of milk from milk tanks. These rule changes also will allow Wisconsin to more effectively manage required annual Grade "A" inspections for the 4,000 bulk milk tankers that operate in the state.

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#### **14. Long Range Implications of Implementing the Rule**

Implementing this rule will ensure that Wisconsin continues to maintain substantial compliance with the PMO and can continue to ship Grade "A" milk and milk products in interstate commerce. It will ensure that Wisconsin's dairy-related businesses continue to fairly compete against dairy businesses in other states that have adopted the PMO.

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#### **15. Compare With Approaches Being Used by Federal Government**

The Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO) establishes minimum regulatory standards for Grade "A" dairy products. States must enact standards substantially equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade "A" milk in interstate commerce. The rule changes are consistent with approaches in the PMO.

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#### **16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their dairy statutes or regulations and therefore already allow partial collections of milk from bulk milk tanks. The rule will also align Wisconsin's regulations with the PMO and neighboring states for licensing and permitting of Grade "A" tankers and bulk milk weighers and samplers. Each of these states licenses milk tankers, and issues a Grade "A" permit after inspection. Some states charge an inspection fee

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

associated with these inspections.

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This rule is expected to have a positive impact and will not have an adverse effect on small business. It does not substantially alter requirements small dairy-related businesses already meet and does not increase license or permit fees. Allowing partial collection of milk from bulk tanks will be voluntary and will allow businesses of all sizes, including small businesses, to manage milk collection and transportation efficiently. Since partial collection of milk will be voluntary, each business will determine whether to use this option based on their own business needs. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses that operate bulk milk tankers by ensuring the timely inspection of tankers for Grade "A" permits. A valid Grade "A" permit is required to transport and deliver Grade "A" dairy products. Provisions allowing more flexibility for who cleans and sanitizes bulk milk tankers and removing an unnecessary reporting requirement for broken seals on tankers will also benefit businesses of all sizes.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The agency requested comment on the potential economic impact of the rule from the following organizations: Dairy Business Association, Professional Dairy Producers of Wisconsin, Cooperative Network, Wisconsin Milk Haulers Association, Wisconsin Association of Dairy Plant Field Representatives, Midwest Food Processors Association, Wisconsin Cheesemakers Association, and the Wisconsin Dairy Products Association.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☒ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☒ Consolidation or Simplification of Reporting Requirements
- ☒ Establishment of performance standards in lieu of Design or Operational Standards
- ☒ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

While the agency considered methods for reducing the impact of the rule on small businesses, all Grade "A" dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration's Pasteurized Milk Ordinance in order to collect, sample, and transport Grade "A" dairy products. No special accommodation may be made for small businesses. The provision in the rule allowing partial collection of milk from bulk tanks is optional and while it is expected to primarily benefit larger businesses, it could also provide small businesses with more management flexibility. Other provisions in the rule will not substantially alter current practice.

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5. Describe the Rule's Enforcement Provisions

The rule does not modify existing enforcement provisions related to the collection, sampling, and transportation of milk. All food, dairy and state-inspected meat businesses are regulated under Chapter 97 of the Wisconsin Statutes. Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses. ATCP 82.16 also contains specific provisions against falsifying records or reports required under ATCP 82, including records related to milk samples and records describing the amount of milk collected from a dairy farm.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- ☐ Yes   ☒ No
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